

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

RELATES TO: KRS 230.225(7)(b), (7)(e), 230.330, 230.804, EO 2008-668, 15 U.S.C. 1821-1831

STATUTORY AUTHORITY: KRS 230.804(2)(b), EO 2008-668

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.804 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.804(2)(b) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to Commission. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions. (1) "Applicant" means a Kentucky affiliate representing a breed of horses which is eligible to register with the commission to participate in the Kentucky Horse Breeders' Incentive Fund.

(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the commission outlining the procedures by which the Kentucky affiliate will award funds from the Kentucky Horse Breeders' Incentive Fund to incentive winners who are members of the Kentucky affiliate.

(3) "Breed" means a subspecies of horse with particular physical characteristics common to the subspecies which are used in establishing the identity of a horse by a registry recognized by the Commission.

(4) "Breeder" means:

(a) A person or persons engaged in the breeding of horses eligible for the KHBIF, as defined by the national association of the Kentucky affiliate recognized by the commission as a participant in the KHBIF program; or

(b) If the national association does not define "breeder", the owner of the dam of a horse when the horse was foaled.

(5) "Closed breed registry" means the restrictions of the official national breed registry recognized by the KHBIF.

(6) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a Kentucky affiliate's award distribution plan.

(7) "Incentive winner" means a person whose horse's performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.

(8) "Kentucky affiliate" means the Kentucky organization that is recognized by a national breed organization representing that particular breed of horse in Kentucky.

(9) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.

(10) "KHBIF" means the Kentucky Horse Breeders' Incentive Fund.

Section 2. Registration of Kentucky Affiliate. (1) Only a Kentucky affiliate may register to participate in the KHBIF.

(2) To become eligible to receive funds from the KHBIF, a Kentucky affiliate shall register with the commission by:

(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/08); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the

commission.

(3) A thoroughbred breed shall not be eligible for registration with the KHBIF.

(4) A standardbred breed shall not be eligible for registration with the KHBIF, unless the standardbred breed consists exclusively of show horses.

(5) The color of a breed of horses shall not be the sole criterion used to define that breed for purposes of registration with the KHBIF.

(6) The authority may establish, under the general jurisdiction of the Kentucky Horse Racing Commission, the Kentucky Horse Breeders' Incentive Fund Advisory Committee. If established, the advisory committee shall consist of three (3) members appointed by the chairman of the commission by July 1 of each year. One (1) member shall be recommended to the chairman for appointment by the Kentucky Equine Education Project (KEEP). If KEEP has not recommended a member for appointment by July 1 of a given year, the Chairman of the Kentucky Horse Racing Commission shall make the appointment without the recommendation. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. Each member of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(7)(a) The Kentucky Horse Breeders' Incentive Fund Advisory Committee shall advise and assist the Kentucky Horse Racing Commission in the registration process described in this section. The advisory committee shall make a recommendation of approval or denial to the commission for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section.

(b) The Kentucky Horse Racing Commission shall employ qualified personnel necessary to assist the commission and the advisory committee in carrying out the provisions of this administrative regulation. These personnel shall serve at the pleasure of the commission, and compensation for these personnel shall be fixed by the commission.

(8) After the advisory committee recommends to the commission the approval or denial of an application, the commission shall consider the recommendation and whether or not the requirements of this administrative regulation have been met, and shall:

(a) Approve the application;

(b) Deny the application; or

(c) Defer consideration of the application for a reasonable time for the purpose of conducting further investigation of the application.

(9) Registration shall be effective for three (3) years. The first three (3) year registration period shall consist of the period beginning January 1, 2006, and ending December 31, 2008.

(10) For the first registration period a Kentucky affiliate shall register with the commission on or prior to March 31, 2007.

(11) For each three (3) year period beginning January 1, 2009, a Kentucky affiliate shall register with the commission on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) year registration period.

(12) A Kentucky affiliate shall have until December 31 following the November 1 deadline set forth in subsection (11) of this section to revise and update any information previously provided to the commission on or before the November 1 deadline.

(13) The application and the accompanying award distribution plan provided to the commission shall set forth the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the

Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed residing in Kentucky;

(d) A letter from the nation breed organization representing the breed certifying that the breed has a closed breed registry; and

(e) The award distribution plan pursuant to which awards will be distributed to KHBIF incentive winners who are breeders or owners of horses bred and foaled in Kentucky. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization;

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization;

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization; and

4. The percentage distribution formula by which the Kentucky affiliate shall grant awards to incentive winners.

(14)(a) The commission shall be recognized and designated as the sole official registrar of the Kentucky Horse Breeders' Incentive Fund for the purposes of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the commission for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky; and

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.

(15) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall promptly notify the commission of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to change.

Section 3. Timing and Distribution of Awards. (1) The events eligible for awards from the Kentucky Horse Breeders' Incentive Fund, as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distributed each year.

(3) The commission, with the cooperation of each Kentucky affiliate shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.

(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:

(a) Dividing the number of horses of the breed twenty-five (25) years of age and younger and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(13)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(13)(c) of this administrative regulation. The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate's application form on the December 31 deadline preceding the three (3) year registration period; and

(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.

(5) An award to an incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the commission pursuant to Section 2(2)(b) of this administrative regulation.

(6) The Kentucky affiliate shall, by March 1 of each year, determine the names of the incentive winners who are entitled to awards for contests held during the previous year and provide the names of the incentive winners to the commission.

(7) The commission shall, by June 1 of each year, notify each incentive winner of the amount of the award to which the incentive winner is entitled by notice sent to the last known address provided to the commission by the Kentucky affiliate.

(8) After receiving notification of an award, each incentive winner shall return an enclosed claim form for the award that certifies that the incentive winner is entitled to the award and that certifies the incentive winner's taxpayer ID number or Social Security number. The claim form shall be delivered to the commission no later than December 31 of the same year in which the commission notified the incentive winner of the award pursuant to subsection (7) of this section.

(9) The claim form shall be the form "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, (12/06).

(10) Any award owing to an incentive winner who cannot be located by December 31 of the year in which the commission attempted to notify the incentive winner of the award pursuant to subsection (7) of this section, shall lapse to the KHBIF.

(11) Failure to return the claim form required by subsection (8) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.

(12) An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semi-annual Reports. (1) A semi-annual status report describing a Kentucky affiliate's progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31. If that date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The semi-annual report shall also include:

(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand;

(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate.

Section 5. Disputes. (1) Any dispute between the commission and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the commission, within thirty (30) days of the action or the inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures. (1) The commission may deny or revoke the registration of a Kentucky affiliate or national breed organization if the Kentucky affiliate or national breed organization:

(a) Knowingly provides the commission with incorrect, false, or misleading information concerning any aspect of the registration of the breed represented by the Kentucky affiliate with the commission;

(b) Knowingly fails to furnish within thirty (30) days information the commission has request-

ed relating to the registration; or

(c) Knowingly violates any provision of KRS Chapter 230 or Title 810 or 811 KAR in any other manner.

(2) If the commission denies or revokes the registration of a Kentucky affiliate or national breed organization, the Kentucky affiliate or national organization may request, and the commission shall schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the commission shall, in its final order, determine whether the Kentucky affiliate or national breed organization has knowingly provided the commission with incorrect, false, or misleading information, or has knowingly failed to provide the commission with requested information, or has knowingly violated any provision of KRS Chapter 230 or Title 810 or 811 KAR in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration;

(d) Bar the Kentucky affiliate or national breed organization which violated subsection (1) of this section from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;

(e) Without funds due to be allocated to the Kentucky affiliate; or

(f) Withdraw funds previously allocated to the Kentucky affiliate.

(4) If a Kentucky affiliate's designee or representative fails to appear at the hearing, the commission may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the Kentucky affiliate which failed to respond to the summons from registering foals to the fund for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;

(c) Withdraw funds previously allocated to the state affiliate;

(d) Withhold funds due to be allocated to the Kentucky affiliate; or

(e) Reschedule the hearing.

(5) For a second or subsequent violation of subsection (1) of this section, the commission may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for period of from one (1) to twenty (20) years.

(6) The commission shall notify the Kentucky affiliate in writing of the action taken by the commission.

(7) If the evidence available to the commission indicates that an individual who is a member of, or acting on behalf of, a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, knowingly provided the commission with incorrect, false, or misleading information, knowingly failed to provide the Authority with requested information, or knowingly violated the federal Horse Protection Act, 15 U.S.C. Sections 1821 through 1831, or any other federal or state law pertaining to the breeding, racing, or showing of horses, or reflecting on the honesty and trustworthiness of the individual to participate in the KHBIF, the commission may take one (1) or more of the following actions:

(a) Condition the continuing registration of the Kentucky affiliate in the KHBIF upon the exclusion of that individual from any further participation in work related to the KHBIF;

(b) Withdraw funds previously allocated to the individual;

(c) Withhold funds due to be allocated to the individual; or

(d) Bar the individual from further participation in the KHBIF for a period of time proportionate to the seriousness of the violation.

(8) An individual against whom disciplinary action has been taken under subsection (7) of this section may appeal the matter to the commission pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration of State Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/08); and

(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, (12/08).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRC Web site at www.khrc.ky.gov. (33 Ky.R. 2242; 3201; eff. 5-4-2007; 35 Ky.R. 1914; 2743; eff. 7-6-2009.)